

Application No. 09/698,640

REMARKS

In the Office Action mailed December 19, 2003, the Examiner rejected pending claim 1. Claim 1 has been amended, and new claims 2-4 have been added. Claims 1-4 remain pending in the application (1 independent, 4 total). Reconsideration is respectfully requested in light of the following Remarks.

A. Claim Rejections - 35 U.S.C. § 112

Claim 1 stands rejected under Section 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner states that there is no concrete and tangible result of the steps cited in the invention. This rejection is respectfully traversed. Nevertheless, in the interest of compact prosecution, claim 1 has been amended to more clearly indicate the concrete and tangible results of the claimed invention.

B. Claim Rejections - 35 U.S.C. § 101

The Examiner has also rejected claim 1 under Section 101 as being directed to nonstatutory subject matter. Specifically, as with the Section 112 rejection cited above, the Examiner states that there is no concrete and tangible result of the steps cited in the invention. While this rejection is also respectfully traversed, claim 1 has been amended to more clearly indicate the concrete and tangible results of the claimed invention.

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C. Claim Rejections – 35 U.S.C. § 103

Claim 1 stands rejected under Section 103(a) as being unpatentable over U.S. Patent No. 6,553,346 (the "Walker reference"). This rejection is respectfully traversed. Specifically, the Examiner states that:

It would have been obvious to one skilled in the art at the time of the invention to read Walker's CPO as a preferred program term from one buyer in one group who is soliciting bids from a plurality of bidders. Walker requires the collection of information about each buyer (customer), especially what they want to buy (Terms).

Applicant disagrees, and respectfully submits that no combination of the Walker reference and the prior art would include each and every element of the claims as amended.

Generally, the Walker reference discloses a system for handling conditional purchase offers (CPO) in the context of, for example, airline travel and the like. That is, one offer will be conditioned on acceptance of a related offer. This assists in managing excess demand and achieves other market efficiencies. Specifically, the Walker reference discloses the "deconstruction" of an overall package into component CPOs which are individually offered to sellers. A package CPO management system then determines whether one or more sellers are in a position to accept each of the individual components, after which the system may bind the buyer to purchase the entire package. See, e.g., Walker reference, column 3, lines 10-24.

The Walker reference does not disclose each and every element of the claims as amended. For example, the Walker reference does not disclose or suggest, either alone or in combination with the prior art, an *auction* system wherein bids from one or more merchants are received in connection with an on-line auction. The Walker reference merely discloses the step of offering the CPO to one or more merchants, then binding the buyer in response to an

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acceptance by the merchant. See, e.g., the Walker reference, Fig. 12a, which shows a non-iterative (i.e., non-auction) process for accepting sellers (block 1255 in Fig. 12a).

Furthermore, the Walker reference does not disclose the step of grouping customers into one or more pools in accordance with a Preferred Program Term. The Walker reference categorizes or partitions CPOs, but does not pool, partition, or otherwise categorize the *customers* who actually intend to purchase the individual products. In no way can the partitioned CPOs be considered a partition of customers.

Indeed, the Walker reference simply does not disclose any form of Program Term or pooling process as disclosed and claimed in the present invention. The Examiner argues, in Paragraph 4 of the Office Action, that the various limitations of claim 1 may be found in "at least columns 1-24." However, Applicant respectfully submits that, to the extent that these columns cover nearly the entire patent document itself, it is difficult to determine which features of the Walker reference are supposed to correspond to the elements of claim 1. The Examiner suggests that the collection of data regarding "what [the customers] want to buy" corresponds to Program Terms. Applicant disagrees, and suggests that this basic customer information as to the desired product is clearly not a "Program Term" as that phrase is used in the present application - i.e., a predefined term, quality, incentive, or other such indicia associated with a product or service that is the subject of the auction.

Therefore, in accordance with the above, Applicant requests that the Section 103 rejection be withdrawn with respect to the claims as amended.

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D. Conclusion


In view of the above remarks, Applicants respectfully submitted that the foregoing remarks fully address the Examiner's objections, and that all of the pending claims comply with 35 U.S.C. § 112, are patentable over the art of record, are directed at statutory subject matter, and are in condition for allowance.

A Notice of Allowance respecting all pending claims is earnestly solicited. Should the Examiner wish to discuss any of the above in greater detail, then the Examiner is invited to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,

Date 3/19/04

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